

POLICE/SHERIFF'S DEPARTMENT		RULES AND REGULATIONS	
SUBJECT: Complaints Against Police Personnel		NUMBER: 1-9	
EFFECTIVE DATE: July 1, 1999		REVIEW DATE:	
AMENDS/SUPERSEDES: RR 1-9, January 1988		APPROVED: _____ Chief of Police/Sheriff	
CALEA STANDARDS: 52.1, 52.2, 52.3		VLEPSC STANDARDS: ADM.18.02-.09, ADM.25.01	

NOTE

This order is for internal use only, and does not enlarge an officer's civil or criminal liability in any way. It should not be construed as the creation of a higher standard of safety or care in an evidentiary sense, with respect to third-party claims. Violations of this directive, if proven, can only form the basis of a complaint by this department, and then only in a non-judicial administrative setting.

INDEX WORDS

Board of inquiry
Complaint
Criminal misconduct
Due process
Financial disclosure statements
Internal investigations
Lineups, photographs of employees
Medical/laboratory examinations of employees
Supervisors, role of (counseling, complaints)

I. POLICY

The department's image and reputation depend on the personal integrity and discipline of all departmental employees. To a large degree, the public image of the department is determined by a professional response to allegations of misconduct against its employees. The department must competently and impartially investigate all allegations of misfeasance, malfeasance, nonfeasance by employees and complaints bearing on the department's response to community needs. The department recognizes that its personnel are often subject to intense pressures in the discharge of their duties. The employee must remain neutral under circumstances that are likely to generate tension, excitement, and emotion. In these situations, actions and events frequently result in misunderstanding and confusion. It is to the advantage of all employees to have a procedure for the investigation of the more

serious allegations and underlying circumstances so that complaints can be resolved in light of the complicated pressures of law-enforcement work.

II. PURPOSE

To describe procedures for making complaints against department personnel, for investigating complaints, and to list and define the dispositions of complaints.

III. PROCEDURES - GENERAL

A. Receipt of complaints

The department encourages citizens to bring forward legitimate grievances regarding misconduct by employees. Department members shall receive all complaints courteously and shall handle them efficiently. All officers are obligated to explain complaint procedures to inquiring citizens.

B. Responsibilities of supervisors

1. First-line supervisors are primarily responsible for enforcing conformance with departmental standards and orders.
2. First-line supervisors shall know the officers in their charge by closely observing their conduct and appearance.
3. First-line supervisors shall be alert to behavioral changes or problems in their subordinates and, if necessary, document these changes and confer with higher authorities. The first-line supervisor shall assess the behavior, take or recommend appropriate action.
4. The supervisor shall recommend and, if appropriate, help conduct extra training for officers not performing according to established standards (see RR 1-7 and RR 1-12).
5. The first-line supervisor shall employ counseling techniques sanctioned by the department. Counseling is used to adjust and correct minor, infrequent errors or instances of poor performance and to ascertain the nature of any professional or personal problems that bear on performance (see RR 1-7).
 - a. The supervisor shall document all instances of counseling.

C. How to make a complaint

A copy of "How to Make A Complaint" will be posted in the public area of the department, provided to media representatives, and may be given to any citizen

requesting information on how to make a complaint. A copy of "How to Make a Complaint" is found in the appendix to this order.

D. Responsibility for handling complaints

1. As a rule, complaints regarding law-enforcement operations will be handled through the chain of command, beginning with the first-line supervisor. Complaints involving how law-enforcement service is provided or a failure to provide service or improper attitudes or behavior may be investigated and handled by the investigator or by the chief of police/sheriff. The chief of police/sheriff may ask an investigator from another agency or the State Police to undertake the investigation.
2. Complaints alleging improper conduct, brutality, or misconduct involving several personnel or supervisory personnel shall be investigated by an outside agency upon request of the chief of police/sheriff.

E. Complaint-handling procedures

1. All complaints, regardless of nature, can be logged in person, by mail, or by phone at any time. As part of the follow-up investigation, persons making complaints by mail or phone normally shall be interviewed and a written, signed complaint prepared. A copy of the complaint form is found in the appendix to this order. Anonymous complaints shall be followed up to the extent possible.
 - a. In case of an anonymous complaint, the officer or other person who receives the anonymous complaint shall complete the form in the appendix to the extent possible.
2. Every effort shall be made to facilitate the convenient, courteous, and prompt receipt and processing of citizen complaints. An employee of the department who interferes with, discourages, or delays the making of complaints shall be subject to disciplinary action.
3. Normally, a citizen with a complaint shall be referred to the chief of police/sheriff who shall assist the citizen in recording pertinent information. The first-line supervisor shall at least conduct a preliminary investigation. The chief of police/sheriff may, if appropriate, conduct a preliminary investigation. ***[Note: In very small agencies, the chief or sheriff may conduct the preliminary investigation.]*** The preliminary investigation consists of questioning the officer, complainants, or witnesses, and securing evidence.
 - a. Upon completion of the preliminary investigation, the following documents shall be prepared and forwarded through the chain of

command: a report of the alleged violation; any documents and evidence pertinent to the investigation; recommendations for further investigation or other disposition.

4. If the first-line supervisor or other investigators determine that the complainant is apparently under the influence of an intoxicant or drug, or apparently suffers from a mental disorder, or displays any other trait or condition bearing on his or her credibility, the supervisor or investigator shall note these conditions on the reverse side of the complaint form. Any visible marks or injuries relative to the allegation shall be noted and photographed.
 - a. Prisoners or arrestees also may make complaints, although circumstances may require a department representative to meet the complainant at a jail or prison for an interview. If appropriate, the representative will have photographs taken of prisoners' injuries.
5. An employee who receives a citizen's complaint through U.S. mail shall place the correspondence and envelope in a sealed envelope and forward it to the chief of police/sheriff, who shall determine investigative responsibility.
6. Complaints received by telephone by dispatchers or other employees shall be courteously and promptly referred to the chief of police/sheriff. The dispatcher or employee shall record the name and telephone number of the complainant and state that the chief of police/sheriff or, if unavailable, the sergeant shall call back as soon as practical.
7. The above procedure may also be used when department employees desire to enter a complaint against any other employee governed by this order.

F. Disposition of complaints generally

The chief of police/sheriff shall:

1. Notify the complainant, in writing, as soon as practical, that the department acknowledges receipt of the complaint, that it is under investigation, that the investigation will be completed within thirty days, and that the complainant will be advised of the outcome. If the investigation exceeds thirty days, the chief of police/sheriff shall write the complainant a letter explaining the circumstances of the delay.
2. Maintain complaint files separate from personnel files.
3. Take appropriate disciplinary action following the investigation.

G. Disposition of serious complaint

1. Allegations of misconduct that might result in discharge, suspension, or demotion, or criminal charges being sought are serious complaints. The term "serious complaint," in this manual, is synonymous with "internal investigation." Internal investigations examine alleged brutality, gross excesses of legal authority, or allegations involving supervisory or multiple personnel.
2. In these cases, the chief of police/sheriff shall:
 - a. Record, register, control or cause to be recorded, registered, or controlled the investigations of employees.
 - b. Supervise the activities under "a."
 - c. Maintain confidential records of same.
 - d. Ensure that the investigation is conducted according to *Virginia Code* § 2.1-116.1 through 116.9, a copy of which the chief/sheriff shall provide to each officer under investigation.
 - e. Maintain close liaison with the commonwealth's attorney in investigating alleged criminal conduct. Where liability is at issue, the chief shall similarly maintain contact with the town attorney. ***[Note: Sheriffs should maintain contact with the person who provides legal advice to their agency.]***

IV. PROCEDURES: Investigative

Two types of investigations may take place: administrative or criminal. Different rules govern interviews of employees in each case. Before any interview, the employee under investigation shall receive a confidential written notice of the complaint. This notice will include a copy of the original complaint, a summary of the facts, and the officer's rights and responsibilities. ***[Note: Administrative and criminal investigations may be conducted simultaneously, but investigators assigned to either may not collaborate or share information.]***

A. Assistance of legal counsel

1. Employees are permitted to have an attorney, supervisor, or other representative with them in the room during any interview regarding allegations of misconduct.
2. The employee's representative is limited to acting as an observer at the interview, except that where the interview focuses on, or leads to, evidence of criminality, the legal representative may advise and confer with the employee during the interview.

B. Interview for administrative purposes

If the chief of police/sheriff wishes to compel an employee to answer questions directly related to his or her official duties and the chief/sheriff is willing to forego the use of any answers in a criminal prosecution, the chief of police/sheriff or another interviewer shall advise the employee that:

1. The purpose of the interview is to obtain information to determine whether disciplinary action is warranted. The answers obtained may be used in disciplinary proceedings resulting in reprimand, demotion, suspension, or dismissal.
2. All questions specifically related to employment must be fully and truthfully answered. Refusal to answer may result in disciplinary action.
3. No answers given nor any information obtained by reason of such statements are admissible against the employee in any criminal proceeding.

a. Read to the employee the following:

"I advise you that you are being questioned as part of an official investigation of the department. You will be asked questions specifically directed and narrowly related to the performance of your official duties or fitness for office. You are entitled to all the rights and privileges guaranteed by the laws and the constitution of this state and the Constitution of the United States, including the right not to be compelled to incriminate yourself. I further wish to advise you that if you refuse to testify or to answer questions relating to the performance of your official duties or fitness for duty, you will be subject to departmental charges which could result in your dismissal from the department. If you do answer, neither your statements nor any information or evidence which is gained by reason of such statements can be used against you in any subsequent criminal proceeding. However, these statements may be used against you in relation to subsequent departmental charges."

4. In an interview for administrative purpose, no *Miranda* rights are required. Further, the foregoing rules are inconsistent with *Miranda* in that employees' statements cannot be used as evidence.
 - a. The interviewing officers shall use the "administrative proceedings rights" form found in the appendix to this instruction.

C. Interviews for criminal investigative purposes

If the chief of police/sheriff believes that criminal prosecutions are possible and wishes to use statements against the employee in a criminal proceeding, or at least wishes to maintain the option of their use, he or another interviewer shall:

1. Give the employee *Miranda* rights.
2. Advise the employee that if he asserts his right not to answer questions, no adverse administrative action will be taken based upon the refusal.
 - a. If the employee decides to answer questions at this point, the responses may be used in *both* criminal and disciplinary proceedings.
 - b. Note that the *Miranda* admonition includes the provision that a lawyer may be present at an interview. Although technically the employee has no right to counsel until the employee has been criminally charged or his or her freedom of action has been deprived, the department wishes the employee to have the option. The department wishes no possibility to arise in which its actions might be construed as coercive.

V. INVESTIGATIVE TOOLS AND RESOURCES

In addition to interviews of the employee and witnesses, the chief of police/sheriff may require other activities in support of a complaint investigation or internal investigation, including:

A. Medical and laboratory examination

The chief of police/sheriff or officer in authority may, based on his observation, require a department employee to submit to a test for alcohol or drug use while on duty. The results may be used in a disciplinary hearing. Refusal to submit to the examination will be grounds for disciplinary action and may result in the employee's dismissal.

1. If the employee is believed to be under the influence of alcohol, a licensed breathalyzer operator shall administer the test. The chief of police/sheriff or officer in authority shall witness the test and sign the report.
2. If the employee has a reading of .05 or higher, or there is other competent evidence of impaired abilities to perform duties, the officer shall be relieved of duty by the chief of police/sheriff or officer in authority.
3. If the employee is believed to be under the influence of self-administered drugs, he may be compelled to submit to a blood or urine test. The test shall be administered under medical supervision where hygienic safeguards are

met. The sample shall be handled using the same safeguards as evidence in a criminal process.

4. If the test shows positive results, or there is other competent evidence of impaired abilities to perform duties, the employee shall be relieved of duty as soon as possible by the chief of police/sheriff or other officers in authority.
5. If an employee refuses to submit to a test, (alcohol or drugs) then the chief of police/sheriff or other officer in authority shall immediately relieve the employee from duty for failure to cooperate in an administrative investigation.
6. The on-duty supervisor may direct an employee to submit to a breath, blood, or urine test when a level of inebriation or drug usage is suspected as interfering with the performance of duty.
 - a. Property assigned to the employee but belonging to the department is subject to inspection where the department has a reasonable suspicion that evidence of work-related misconduct may be found therein. Department property includes files, storage lockers, desks, and vehicles. See GO 2-35, Drug testing, for further details.

B. Photograph and lineup identification procedures

Officers may be required to stand in a lineup for viewing by citizens for the purpose of identifying an employee accused of misconduct. Refusal to stand in a properly conducted lineup is grounds for disciplinary action and may result in dismissal **if** the criminal prosecution is not anticipated.

1. A book of photos of department employees may be maintained for the purpose of identification by citizens of an employee accused of misconduct. Photographs of employees for the identification book are required by the department and shall be used when narrowly related to the employee's job.
2. Photographs or videotape pictures of employees, with or without their consent, may be taken for the purpose of internal investigations as related to the employee's job when the employee is suspected of misconduct.

C. Financial disclosure statements

An employee may be compelled to make financial disclosure statements when directly and narrowly related to allegations of misconduct involving any unlawful financial gain. Any evidence gained during the investigation of an administrative matter cannot be used in any criminal proceeding.

D. Polygraph

1. Policy: All personnel shall be required to submit to a polygraph when ordered to do so by the chief of police/sheriff, or by another superior officer with the authorization of the police chief/sheriff.
2. The police chief/sheriff or his designee may order employees to take a polygraph when charged with a Category III offense (see RR 1-7 for a discussion of the offense categories).
3. The results of the polygraph examination shall not be used as the sole basis for disciplinary action against any employee.
4. Any polygraph examination given under the provisions of this order shall be administered by a private contractor licensed to administer polygraph examinations in the Commonwealth of Virginia or must be a licensed examiner from another law-enforcement agency. No employee shall administer an examination to another employee.
5. Refusal to submit to a polygraph examination or to answer all questions pertaining to the charges in the polygraph examination shall be grounds for disciplinary action and may result in dismissal from the department.
6. In order to comply with state (§§ 2.1-116 et. seq. "Law Enforcement Officers' Procedural Guarantees") and federal (privilege against self-incrimination) law, the following information must be provided to the employee asked to submit to examination:
 - a. The nature of the inquiry, the name and rank of the investigating officer, and the name and rank of any person present during the examination.
 - b. That his or her answers will not be used to prosecute him or her.
 - c. That he or she may refuse to take the polygraph or answer any questions, however, this refusal shall be grounds for disciplinary action which may include dismissal.
 - d. That answers given during the polygraph examination do not constitute a waiver of the privilege against self-incrimination as it relates to criminal matters.
 - e. A "Polygraph Examination Acknowledgement of Rights" form must be initialed and signed in the spaces indicated (see appendix to this instruction). Refusal to do so shall be grounds for disciplinary action which may result in dismissal.

7. Any person who refuses to submit to a polygraph examination or refuses to answer any questions pertaining to the charges in such an examination as outlined above may be terminated from employment.

[Note: Readers of this manual will note that the polygraph is used for internal investigations only, not as part of screening applicants for employment. Agencies may wish to obtain legal advice on the use of polygraphs. Law-enforcement executives should understand that the legal status of polygraphs continues to change. For example, both the American Psychological Association and the American Medical Association have stated on record that polygraph testing still produces unreliable results and should therefore receive legislative restrictions. In 1987, in a statement to the U.S. Senate, the American Civil Liberties Union stated, "The so-called 'lie detector' is really a 'stress detector' and a polygraph examiner has no scientific basis for distinguishing the stress that may indicate deception from any other stress, including fear, anger, humiliation, or frustration regarding the polygraph test itself." Also, note that some agencies will order a polygraph exam only if the complainant also agrees to submit to one.]

VI. ADJUDICATION OF COMPLAINTS

- A. The chief of police/sheriff will classify completed internal affairs investigations as:
 1. Unfounded - no truth to allegations.
 2. Exonerated - allegations true, but result of adherence to proper and appropriate procedures and techniques.
 3. Not sustained - unable to verify the truth of the matters under investigation.
 4. Sustained - allegations true.
- B. Completed investigations classified as unfounded, exonerated or not sustained will be maintained in internal affairs files in the chief's/sheriff's office. Sustained complaints shall be filed in the individual employee's department personnel file with a copy in the internal affairs files. ***[Note: Internal affairs files should be maintained in secure storage.]***
- C. Disciplinary action taken shall be determined by the seriousness of the violation or the extent of injury to the victim. It shall be commensurate with the circumstances surrounding the incident and in consideration of the employee's service record and prior sustained complaints. (See RR 1-7 for details.)
- D. Disciplinary records
 1. The department shall maintain a log of all complaints.

2. The complaints and internal investigative files shall be kept in a secure area and shall be maintained as long as state archival policy dictates.
 - a. Category I offenses shall be purged two years after adjudication, if no further offenses in any category have occurred. Category II offense records similarly shall be purged after three years. Category III records are permanently retained.
3. The chief/sheriff shall direct a periodic audit of complaints to ascertain a need for training or a revision of policy. See RR 1-4, Inspections.
4. The chief/sheriff shall publish an annual or other periodic summary of complaints that shall be made available to the public.

VII. DUE PROCESS

- A. The Fourteenth Amendment to the Constitution provides that a citizen may not be deprived of "life, liberty, or property, without due process of law." Public employees have a limited property interest in continued employment sufficient to require due process in any administrative proceedings that might result in suspension or dismissal.
- B. The department seeks to observe due process of law in the philosophy of the 14th Amendment in any disciplinary proceeding. Nevertheless, the foregoing rules circumscribe when legal counsel may or may not be used during interviews of employees suspected of misconduct.
- C. Despite an employee's limited property interest in his job, as described in paragraph VII.A, the simple fact that an employee has held a job for years does not entitle him or her to keep it.
- D. The department recognizes that an employee, though dismissed or suspended, may have a liberty interest to enjoy future employment elsewhere and, if suspended or dismissed, should have an opportunity to set forth his or her point of view for name-clearing purposes. In view of this interest, the department affords an employee a hearing (per RR 1-7).

VIII. BOARD OF INQUIRY

- A. The chief of police/sheriff may invoke a board of inquiry at any time for any disciplinary purpose. The board will serve to review facts or information to resolve an allegation of misconduct. A board will always be convened in the event of a police shooting, death, or serious injury of an officer or citizen killed or injured incident to law-enforcement action, or accident involving a department vehicle.

1. A board of inquiry shall consist of at least three people, including the town manager *[except in the case of a sheriff's office]*, chief of police/sheriff (unless involved in the incident under scrutiny), plus a law-enforcement officer of the rank of sergeant or above from a nearby agency or the Department of State Police.
2. The board shall recommend a decision to the chief of police/sheriff, or if the chief/sheriff is involved in the incident, to the town manager. *[Note: In the case of a sheriff, there may not be a higher appealable authority.]*
3. The board's proceedings will not be recorded and transcribed, however, a board chairman shall be selected from among the board members who shall write, in a memorandum to file, a summary of the proceedings, names of board members, and the board's recommendations.

[Note: A growing number of law-enforcement agencies are employing some form of citizen review of complaints against officers. While RR 1-9 does not presume the existence of a civilian review board, for sample policies and ordinances on civilian review, see Citizen Review Resource Manual, edited by Samuel Walker, published by the Police Executive Research Forum (PERF), Washington, D.C., 1995, telephone 202-466-7820.]

HOW TO MAKE A COMPLAINT

1. If you wish to make a complaint about the actions of an officer or about any aspect of law-enforcement operations, please:
 - a. Come to the department and tell any employee that you want to make a complaint; or
 - b. Call the department or the town manager's office and tell the person answering the phone that you want to make a complaint; or
 - c. Write your complaint and mail it to the chief of police/sheriff.
2. A supervisory officer will assist you in filling out a complaint form. This form asks you to identify yourself and then to give specific details about your complaint.
3. Your complaint will then be investigated. You may be contacted and asked additional questions about your complaint.
4. If it is going to take a long time to investigate your complaint, you will receive a letter telling you approximately when you may expect a reply.
5. When your complaint has been investigated, the chief of police/sheriff will review the investigation and will write you a letter explaining what has been found out about the matter.

Appendix to RR 1-9

REPORT OF COMPLAINT AGAINST POLICE PERSONNEL

CONFIDENTIAL

Name of complainant: _____

At what address can you be contacted?: _____

What phone number? Residence: _____ Work: _____

Date and time of incident: _____

Location of incident: _____

Name of officer(s) or employee(s) against whom complaint is being filed, or other identifying marks (car number, badge number, etc.)

Rank: _____ Name: _____

I.D. # _____ Badge: _____

Vehicle: _____

Name(s)/address/phone number or other identifying information concerning any witnesses, if applicable:

Statement of allegation:

(If further space is needed use reverse side of sheet)

I understand that this statement of complaint will be submitted to the **[your agency]** and may be the basis for an investigation. Further, I sincerely and truly declare and affirm that the facts contained herein are complete, accurate, and true to the best of my knowledge and belief. Further, I declare and affirm that my statement has been made by me voluntarily without persuasion, coercion, or promise of any kind.

I understand that, under the regulations of the department, the employee against whom this complaint is filed may be entitled to request a hearing before a board of inquiry. By signing and filing this complaint, I hereby agree to appear before a board of inquiry, if one is requested by the employee, and to testify under oath concerning all matters relevant to this complaint.

Signature of Complainant

Date

____ Check if complainant refused to sign

Signature of Person Receiving Complaint

Date and Time Received

Appendix to RR 1-9

**ADMINISTRATIVE PROCEEDINGS RIGHTS
NOTICE OF ALLEGATIONS**

NAME _____ DATE _____ TIME _____

The *Code of Virginia* (§ 2.1-116.2) provides that whenever an investigation by an agency focuses on matters which could lead to the dismissal, demotion, suspension or transfer for punitive reasons of a law-enforcement officer, the following conditions shall be compiled with:

1. Any questions of the officer shall take place at a reasonable time and place as designated by the investigating officer, preferably when the officer under investigation is on duty and at the office of the investigating officer unless circumstances dictate otherwise.
2. Before questioning the officer, he shall be informed of (1) the name and rank of the investigating officer and (2) of any person to be present during the questioning and (3) the nature of the investigation.

Departmental policy provides that:

1. You are entitled to read the complaint lodged by the complainant.
2. Refusal to answer all questions pertaining to the allegations made by the complainant, either orally or in writing, shall be grounds for disciplinary action and may result in dismissal from the department.
3. The answers given during the investigation of an administrative matter will not be used against you in any criminal proceedings.
4. The answers given do not constitute a waiver of your privilege against self-incrimination as related to criminal matters.
5. Before being formally charged, during an administrative investigation, no attorney will be permitted to be present.

Accordingly, you are hereby advised that the following allegations have been directed to you:

COMPLAINANT(S): 1. _____ 2. _____

The undersigned hereby acknowledges receipt in writing of the charges or allegations against him and his rights as pertaining to administrative proceedings.

Signature

WITNESS:

Appendix to RR 1-9

POLYGRAPH EXAMINATION ACKNOWLEDGEMENT OF RIGHTS

I, _____ have been ordered by
_____*[chief/sheriff]*_____ to submit to a polygraph examination as a
condition of employment in connection with the investigation of

I understand that my answers to such examination, as they relate to the above-referenced investigation, will not be used to prosecute me. _____ (initial)

I understand my refusal to submit to such examination or refusal to answer questions pursuant to such examination shall lead to disciplinary action which may include termination of my employment. _____ (initial)

I understand that my responses do not constitute a waiver of my privilege against self-incrimination as it relates to criminal matters. _____ (initial)

I understand my refusal to sign this form shall lead to disciplinary action which may include termination of my employment. _____ (initial)

Employee Signature

Witness Signature

Date

Date

CERTIFICATE TO BE COMPLETED IN EVENT OF REFUSAL TO SIGN FORM

I, _____, hereby certify the
(Name and Rank)

Polygraph Examination Acknowledgement of Rights was presented
to _____ on this date in
(Name and Rank)

connection with the above-referenced investigation, that the

contents of the form were made known to him, and that failure to

sign the form was grounds for disciplinary action, including

dismissal from employment, said _____
(Employee)

refused in my presence to sign the Polygraph Examination

Acknowledgement of Rights.

(Employee Signature)

(Witness Signature)

(Date)

(Date)

Appendix to RR 1-9